IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2561 OF 2006

M/s. Sky Gourmet Catering Private Ltd. and anr. ... Petitioners

Versus

AIR India Limited and anr. ... Respondents

Mr. Navroz Seervai,Sr,. counsel with Mr. Rajiv Narula and Mr. A. Dasgupta i/by M/s. Jhangiani Narula & Associate for Petitioner.

Mr. J. Saluja i/by M.V. Kini & Co. for R. No. 1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: NOVEMBER 29, 2006

P.C.:

. The Petitioner has approached this court contending that the action of the Respondent in not opening their price bids was arbitrary. For the view to be taken, it is not necessary for us to set out the facts in detail. The technical bid was opened on 27.1.2005. One of the requirement was clause 3.2 which reads as under :

> "Caterer must have in flight catering experience in providing catering and handling to International carriers."

. The affidavit filed by Mr. Vijay Shirsat, on behalf of the Air India, has enclosed relevant tender documents of the Petitioner herein. Under

Clause 3.2.1 information given is :

> "Number/names of the Airlines presently catering to : One, Jet Airways. "

Based on this information, the technical bid of the Petitioner was accepted. It is the case of the Respondent Air India that they thereafter sought clarifications from Jet Airways. They had written to Jet Air Ways by communication dated 1st March, 2006 to which they received reply dated 24.3.2006 pointing out that the Petitioners had not operated in their International sectors during January, 2005 nor are they catering to any International sectors of Jet Airways at present.

. The submission of the learned counsel for the Petitioners is that after the technical bid was opened the respondent Air India had taken inspection of their facilities for providing catering services. It is also submitted that they are one of the leading caterers in providing in flight catering services to Jet Airways and Air India Express, Malaysian Airlines and Kingfisher AirLines.

. In these circumstances, the question to be answered is whether on the date the bid was invited, were the Petitioners qualified. The Petitioners had

only given their experience in terms of Clause 3.2.1 of Jet Airways. Jet Airways has clarified that the Petitioners have not operated on their intentional sectors during January, 2005 nor were they catering to any international sectors of Jet Airways that time.

. A reading of Clause 3.2 would make it clear that what the tenders invited by AIR India was for providing catering and handling of international carriers. This can not be read to mean that a person serving on the domestic flights, can be said to meet the requirement if that airline also operates internationally. The tender condition would require that the the caterer must have handled and catered to international flights. Considering the above, in our opinion, even though the technical bid of the Petitioners was opened, in fact the Petitioner did not meet with the necessary requirement of experience and consequently the subsequent act of respondent in rejecting the tender can not be said to be arbitrary or contrary to tender documents.

. It may also be pointed out that the contracts have already been awarded. For the aforesaid reasons, we find no merit in this petition which is accordingly disposed of.

(ANOOP V. MOHTA,J.) **(F.I. REBELLO, J.)**